

Subpart F—Adjudication

§ 154.40 General.

(a) The standard which must be met for clearance or assignment to sensitive duties is that, based on all available information, the person's loyalty, reliability, and trustworthiness are such that entrusting the person with classified information or assigning the person to sensitive duties is clearly consistent with the interests of national security.

(b) The principal objective of the DoD personnel security adjudicative function, consequently, is to assure selection of persons for sensitive positions who meet this standard. The adjudication process involves the effort to assess the probability of future behavior which could have an effect adverse to the national security. Since few, if any, situations allow for positive, conclusive evidence of certain future conduct, it is an attempt to judge whether the circumstances of a particular case, taking into consideration prior experience with similar cases, reasonably suggest a degree of probability of prejudicial behavior not consistent with the national security. It is invariably a subjective determination, considering the past but necessarily anticipating the future. Rarely is proof of trustworthiness and reliability or untrustworthiness and unreliability beyond all reasonable doubt.

(c) Establishing relevancy is one of the key objectives of the personnel security adjudicative process in evaluating investigative material. It involves neither the judgment of criminal guilt nor the determination of general suitability for a given position; rather, it is the assessment of a person's trustworthiness and fitness for a responsibility which could, if abused, have unacceptable consequences for the national security.

(d) While equity demands optimal uniformity in evaluating individual cases, assuring fair and consistent assessment of circumstances from one situation to the next, each case must be weighed on its own merits, taking into consideration all relevant facts, and prior experience in similar cases. All information of record, both favorable and unfavorable, must be consid-

ered and assessed in terms of accuracy, completeness, relevance, seriousness, and overall significance. In all adjudications the protection of the national security shall be the paramount determinant.

§ 154.41 Central adjudication.

(a) To ensure uniform application of the requirement of this part and to ensure that DoD personnel security determinations are effected consistent with existing statutes and Executive orders, the head of each Military Department and Defense Agencies shall establish a single Central Adjudication Facility for his/her component. The function of such facility shall be limited to evaluating personnel security investigations and making personnel security determinations. The chief of each Central Adjudication Facility shall have the authority to act on behalf of the head of the Component concerned with respect to personnel security determinations. All information relevant to determining whether a person meets the appropriate personnel security standard prescribed by this part shall be reviewed and evaluated by personnel security specialists specifically designated by the head of the Component concerned, or designee.

(b) In view of the significance each adjudicative decision can have on a person's career and to ensure the maximum degree of fairness and equity in such actions, a minimum level of review shall be required for all clearance/access determinations related to the following categories of investigations:

(1) BI/SBI/PR/ENAC/SII:

(i) *Favorable*: Completely favorable investigations shall be reviewed and approved by an adjudicative official in the civilian grade of GS-7/9 or the military rank of O-3.

(ii) *Unfavorable*: Investigations that are not completely favorable shall undergo at least two levels of review by adjudicative officials, the second of which must be at the civilian grade of GS-11/12 or the military rank of O-4. When an unfavorable administrative action is contemplated under § 154.56(b), the letter of intent (LOI) to deny or revoke must be approved and signed by an adjudicative official at the civilian grade of GS-13/14 or the military rank

of O-5. A final notification of unfavorable administrative action, subsequent to the issuance of the LOI, must be approved and signed at the civilian grade of GS-14/15 or the military rank of O-6.

(2) *NACI/DNACI/NAC/ENTNAC*:

(i) *Favorable*: A completely favorable investigation may be finally adjudicated after one level of review provided that the decisionmaking authority is at the civilian grade of GS-5/7 or the military rank of O-2.

(ii) *Unfavorable*: Investigations that are not completely favorable must be reviewed by an adjudicative official in the civilian grade of GS-7/9 or the military rank of O-3. When an unfavorable administrative action is contemplated under § 154.56(b), the letter of intent to deny/revoke must be signed by an adjudicative official at the civilian grade of GS-11/12 or the military rank of O-4. A final notification of unfavorable administrative action subsequent to the issuance of the LOI must be signed by an adjudicative official at the civilian grade of GS-13 or the military rank of O-5 or above.

(c) Exceptions to the above policy may only be granted by the Deputy Under Secretary of Defense for Policy.

§ 154.42 Evaluation of personnel security information.

(a) The criteria and adjudicative policy to be used in applying the principles at § 154.40 are set forth in § 154.7(a) and Appendix H of this part. The ultimate consideration in making a favorable personnel security determination is whether such determination is clearly consistent with the interests of national security and shall be an overall common sense evaluation based on all available information. Such a determination shall include consideration of the following factors:

- (1) The nature and seriousness of the conduct;
- (2) The circumstances surrounding the conduct;
- (3) The frequency and recency of the conduct;
- (4) The age of the individual;
- (5) The voluntariness of participation; and
- (6) The absence or presence of rehabilitation.

(b) Detailed adjudication policy guidance to assist adjudicators in determining whether a person is eligible for access to classified information or assignment to sensitive duties is contained in Appendix H. Adjudication policy for access to SCI is contained in DCID 1/14.

§ 154.43 Adjudicative record.

(a) Each adjudicative determinations, whether favorable or unfavorable, shall be entered into the Defense Clearance and Investigations Index (DCII) on a daily basis, but in no case to exceed 5 working days from the date of determination.

(b) The rationale underlying each unfavorable personnel security determination, to include the appeal process, and each favorable personnel security determination where the investigation or information upon which the determination was made included significant derogatory information of the type set forth in § 154.7 and appendix H to part 154, shall be maintained in written or automated form and is subject to the provisions of 32 CFR part 285 and 32 CFR part 310. This information shall be maintained for a minimum of 5 years from the date of determination.

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Subpart G—Issuing Clearance and Granting Access

§ 154.47 General.

(a) The issuance of a personnel security clearance (as well as the function of determining that an individual is eligible for access to Special Access program information, or is suitable for assignment to sensitive duties or such other duties that require a trustworthiness determination) is a function distinct from that involving the granting of access to classified information. Clearance determinations are made on the merits of the individual case with respect to the subject's suitability for security clearance. Access determinations are made solely on the basis of the individual's need for access to classified information in order to